

FEDERAL RESERVE SYSTEM

The Goldman Sachs Group, Inc.
Goldman Sachs Bank USA Holdings LLC
New York, New York

Order Approving Formation of Bank Holding Companies

The Goldman Sachs Group, Inc. (“Goldman”) and Goldman Sachs Bank USA Holdings LLC (“Goldman Holdings”) each has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”) (12 U.S.C. § 1842) to become a bank holding company on conversion of Goldman Sachs Bank USA, Salt Lake City, Utah (“Goldman Bank”), to a state-chartered bank.¹ Goldman Bank currently operates as an industrial loan company that is exempt from the definition of “bank” under the BHC Act.²

Goldman, with total consolidated assets of approximately \$1.1 trillion, engages in investment banking, securities underwriting and dealing, asset management, trading and other activities through a variety of subsidiaries both in the United States and overseas.³ Its principal subsidiaries include Goldman Sachs & Co., New York, New York, a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*).

¹ Goldman Holdings is a wholly owned subsidiary of Goldman through which Goldman owns all of the voting stock of Goldman Bank.

² See 12 U.S.C. § 1841(c)(2)(H).

³ Asset data for Goldman are as of May 30, 2008. Asset and deposit data for Goldman Bank are as of June 30, 2008.

Goldman Bank has total consolidated assets of approximately \$25 billion and has deposits of approximately \$23 billion. Goldman Bank engages primarily in extending credit, including corporate loans and loan commitments, and taking deposits of the type permissible under the exception in section 2(c)(2)(H) of the BHC Act for an industrial loan company.

Factors Governing Board Review of Transaction under the BHC Act

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 *et seq.*) (“CRA”) of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act and other applicable federal banking laws.⁴

Section 3(b)(1) of the BHC Act⁵ requires that the Board provide notice of an application under section 3 to the appropriate federal or state supervisory authority for the bank to be acquired and provide the supervisor a

⁴ In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act. Because the proposed transaction does not involve an interstate bank acquisition by a bank holding company, the provisions of section 3(d) of the BHC Act do not apply in this case.

⁵ 12 U.S.C. § 1842(b)(1).

period of time (normally 30 days) within which to submit views and recommendations on the proposal. Section 3(b)(1) also permits the Board to shorten or waive this notice period in certain circumstances.

The Board has notified the Commissioner of the Utah Department of Financial Institutions (“Commissioner”), the appropriate state supervisory authority for Goldman Bank, of the proposed transaction. The Commissioner has notified the Board that the Commissioner does not object to approval of the proposal.

In light of the unusual and exigent circumstances affecting the financial markets, and all other facts and circumstances, the Board has determined that emergency conditions exist that justify expeditious action on this proposal.⁶ For the same reasons, and in light of the fact that this transaction represents the conversion of an existing subsidiary of the applicants from one form of depository institution to another, the Board has waived public notice of this proposal.⁷

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition proposal that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable

⁶ See 12 CFR 225.14(d)(4).

⁷ 12 CFR 225.16(b)(3).

effect of the proposal in meeting the convenience and needs of the community to be served.⁸

The proposal involves the conversion of an existing, wholly owned industrial loan company subsidiary of Goldman into a bank with no resulting change in the ownership of Goldman Bank or Goldman. In addition, Goldman does not propose to acquire an additional bank as part of this proposal. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market and that the competitive factors under section 3 of the BHC Act are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors.⁹ The Board has carefully considered the factors in light of all the facts of record, including supervisory information received from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by Goldman.

The Board consistently has considered capital adequacy to be an especially important aspect in analyzing financial factors. Goldman is adequately capitalized, and all the Goldman entities that are subject to regulatory capital

⁸ 12 U.S.C. § 1842(c)(1).

⁹ 12 U.S.C. § 1842(c)(2) and (3).

requirements currently exceed the relevant requirements. In addition, Goldman Bank currently is well capitalized under applicable federal guidelines. Goldman Bank also would be well capitalized on a pro forma basis on consummation of the proposal. Other financial factors are consistent with approval.

The Board also has carefully considered the managerial resources of Goldman in light of all the facts of record, including confidential supervisory information and information provided by Goldman. Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved are consistent with approval, as are the other supervisory factors the Board must consider.

Convenience and Needs Factor

The Board also has carefully considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record. The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the CRA. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹⁰

¹⁰ The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the

Goldman Bank, which is the only institution that Goldman controls that is subject to evaluation under the CRA, received a “satisfactory” CRA performance rating from the Federal Deposit Insurance Corporation at its most recent examination, as of May 22, 2006. In addition, Goldman’s conversion of Goldman Bank into a bank for purposes of the BHC Act will enhance the ability of Goldman Bank to meet the convenience and needs of its communities by permitting the bank to offer a wider array of deposit products.

Based on a review of the entire record, and for the reasons discussed above, the Board has concluded that considerations relating to the convenience and needs factor and the CRA performance records of Goldman Bank are consistent with approval of the proposal.

Nonbanking Activities and Financial Holding Company Declaration

Goldman engages in a wide range of nonbanking activities that have been determined to be financial in nature, incidental to a financial activity, or complementary to a financial activity pursuant to section 4(k) of the BHC Act.¹¹ These activities include, among other things, underwriting, dealing, and making a market in securities; providing financial, investment, or economic advisory services; acting as a placement agent in the private placement of securities; engaging in merchant banking activities; acting as principal in foreign exchange

consideration of an institution’s CRA record. See 64 Federal Register 23,641 (1999).

¹¹ See 12 U.S.C. § 1843(k).

and in derivative contracts based on financial and nonfinancial assets; and making, acquiring, or brokering loans or other extensions of credit.¹²

Goldman expects promptly to file an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board's Regulation Y. Section 4 of the BHC Act by its terms provides any company that becomes a bank holding company two years to conform its nonbanking investments and activities to the requirements of section 4 of the BHC Act, with the possibility of three one-year extensions.¹³ Goldman must conform to the BHC Act any impermissible nonfinancial activities it may conduct within the time requirements of the Act.

Goldman has also provided notice of its proposal to retain its foreign bank subsidiaries under section 4(c)(13) of the BHC Act. Based on the record, the Board has no objection to the retention of such subsidiaries.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications under section 3 of the BHC Act should be, and hereby are, approved. In reaching its decision, the Board has considered all the facts of record in light of the factors that the Board is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Goldman and Goldman Bank with all the commitments made in connection with the applications, including the commitments and conditions discussed in this order. The Board's approval also is subject to all the conditions

¹² See 12 U.S.C. § 1843(k)(4)(C), (E), and (H); 12 CFR 225.28(b)(1) and (b)(8)(ii) and 225.171 *et seq.*

¹³ See 12 U.S.C. § 1843(a)(2).

set forth in Regulation Y and to the Board's authority to require such modification or termination of the nonbanking activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. These commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

Because the proposal does not involve the acquisition, merger, or consolidation of a bank, the post-consummation period in section 11 of the BHC Act does not apply.¹⁴ Accordingly, the transaction may be consummated immediately and may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,¹⁵ effective September 21, 2008.

(SIGNED)

Robert deV. Frierson
Deputy Secretary of the Board

¹⁴ 12 U.S.C. § 1849(b)(1).

¹⁵ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, Kroszner, and Duke.